THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.8608 AND 8653 OF 2006

DATED:09-08-2007

W.P.No.8608 of 2006

BETWEEN

Totakura Srikanth,
S/o. Gandhi,
R/o. Nidamanuru,
Vijayawada Rural,
Krishna District.

...PETITIONER

AND

The Commissioner of Police,
Vijayawada and two others.

...RESPONDENTS

W.P.No.8653 of 2006

BETWEEN

Vallabaneni Babji,
S/o. Ramaiah,
R/o. SER Centre,
Prasadampadu,
Vijayawada,
Krishna District.

...PETITIONER

AND

The Commissioner of Police,
Vijayawada and two others.

...RESPONDENTS

COMMON ORDER:

Heard the learned counsel for the petitioners and learned Government of Home appearing for the respondents.

2. Petitioner in W.P.No.8608 of 2006 submits that he was implicated, ultimately tried and acquitted in S.C.No.144 of 2004 on the file of VII Additional District and Sessions Judge (Fast Track Court) Vijayawada; S.C.No.287 of 2004 on the file of III Additional Sessions Judge (Fast Track Court), Guntur and C.C.No.13 of 2003 on the file of the Special Mobile Magistrate, Guntur; on 01.12.2005, 25.10.2005 and 18.11.2003 respectively and no further cases are pending against him, therefore, opening of the rowdy sheet against him in 2003 and insisting him to appear before the Station House Officer on every Sunday is illegal and arbitrary and the police standing Order 742 has no application as he is not an habitual offender.

3. Petitioner in W.P.No.8653 of 2006 submits that he was also implicated and tried in the aforesaid cases i.e. S.C.No.144 of 2004 and S.C.No.287 of 2004, in which he was acquitted on 01.12.2005 and 25.10.2005 respectively after the trial. Therefore, opening of rowdy sheet under police standing order 742 and continuing the same is illegal and arbitrary.

4. Counter has been filed in W.P.No.8606 of 2006 on 12.07.2006 stating that the aforesaid cases ended in acquittal as the witnesses turned hostile due to fear of the accused. It is stated that the considering the lawlessness, violent and gruesome activities and with an intent to curb the criminal activities and to keep a watch over their activities, the rowdy sheets have been opened by Patamta Law and Order Police, Vijayawada after obtaining orders of the Assistant Commissioner of Police, Division. II, Vijayawada vide proceedings dated 11.03.2003 and the same is being reviewed from time to time and renewed up to 31.12.2006. It is stated that the said orders are neither arbitrary nor illegal in view of the provisions of Order 601-A of the Andhra Pradesh Police Manual. It is further stated that the petitioners were

not falsely implicated but as there is accusation of committing offences under Sections 147, 341, 365, 506, 148, 452, 324, 307 read with Section 34 and 149 of the Indian Penal Code all the aforesaid three cases have been registered. The contention of the petitioners that they were asked to report at the Police Station on every Sunday is false and hence denied.

It is stated that the object of opening rowdy sheet against the individuals is to monitor their activities closely and to prevent their attempts to commit an offence, which may end in breach of public peace and tranquility and that containing the activities of rowdy and goonda elements is a part and parcel of enforcement of law and order. It is stated that the people were not coming forward to complain against the petitioners for fear of retribution and that the petitioners have not made any representation before the officials seeking closure of the rowdy sheets. Petitioners are dangerous rowdy elements, they abet crimes, as such rowdy sheets are being maintained against the petitioners and Vallabhaneni Nagarajkumar @ Sivaramakrishna @ Bhayya Nani, who is their close associate and though he continuing his illegal activities, police could not proceed against him as none is coming forward to report and depose against them for fear of retribution and harm to their lives and properties. Therefore, the petitioners being desperate characters and maintaining gangs, a watch is essential to contain their illegal, violent and gruesome activities.

5. Learned counsel for the petitioners relied on a judgment of this Court in **MOHAMMED QUADEER v. COMMISSIONER OF POLICE, HYDERABAD**[1] wherein the cases registered against the petitioners also ended in acquittal but as per the earlier police standing order 735 a history sheet shall be retained for two years of registration and as per the orders of the Gazetted Officer the extension can be made up to the end of December and further annual extension from January to December. The order 735 deals with history sheet but not rowdy sheet. The learned Judge held that

the opening of rowdy sheet against the petitioners therein with a view to keep a watch and surveillance, has nothing do with the maintenance of law and order, as no cases have been registered against them since 1996 and accordingly, the order dated 21.09.1999 to continue the rowdy sheets was set aside and the respondents were directed to close down the rowdy sheets opened against the petitioners.

6. The learned counsel for the petitioners further relied on a judgment of the Supreme Court in **AYUB v. S.N. SINHA**[2] wherein the Apex Court held that habitually means repeatedly or persistently.

It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It cannot frequent commission of acts or omissions of the same kind referred to in each sub-clause or an aggregate of similar acts or omissions.

Thus, it is stated that as the criminal cases pending against the petitioner ended in acquittal, it cannot be said that they are habitual offenders.

7. The earlier police standing orders have been revised and updation of the Andhra Pradesh Police Manual has been approved by the Government in G.O.Ms.No.201 Home (Police.C) Department dated 09.09.2001 subject to certain conditions mentioned in the G.O. and the manual envisages only guidelines and procedures in accordance with the provisions of law, acts and rules for all police officers.

The history sheet is maintained under standing order 597 and the power to continue or discontinue the history sheet is dealt with order 599-1. The suspect sheets are opened under order 600-1 whereas the persons mentioned under order 601 can be classified as rowdies. It is just and necessary to extract the relevant orders 601 and 602, which deal with opening of a rowdy sheet and continuing the same.

601. The following persons may be classified as rowdies and Rowdy

Sheets (Form 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO.

A. Persons who habitually commit, attempt to commit or abet the commission of, offences involving breach of the peace, disturbance to public order and security.

B. Persons bound over under Sections 106, 107, 108(1)(i) and 110(e) and (g) of Cr.P.C.

C. Persons who have been convicted more than once in two consecutive years under Sections 59 and 70 of the Hyderabad City Police or under Section 3, clause 12, of the AP Towns Nuisances Act.

D. Persons who habitually tease women and girls and pass indecent remarks.

E. Rowdy sheets for the rowdies residing in one Police Station area but found frequenting the other PSs area, can be maintained at all Police Stations.

F. Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, trades and other residents.

G. Persons who incited and instigate communal/caste or political riots.

H. Persons detained under the "AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986" for a period of 6 months or more.

I. Persons who are convicted for the offence under the Representatives of the People's Act for rigging and carrying away ballot paper, boxes and other polling material.

Period of retention of History Sheets of Suspects/Rowdies

602-1. History Sheets of suspects shall be maintained form the date of registration up to the end of December, after which the orders of a gazetted officer as to either discontinuance or retention for a further period shall be obtained.

2. Merely because a suspect/rowdy, having a history sheet, is not figuring as accused in the previous 5 years after the last case in which he was involved, it should not preclude the SP/DCP/CP to continue the history sheet if SP/DCP/CP is of the considered view that his activities are prejudicial to the maintenance of public order or one affecting peace and tranquility in the area or the victims are not coming forward to give complaint against him on account of threat from him.

8. Under order 602-2 merely because a suspect/rowdy is not figuring as an accused in the previous 5 years after the last case in which he was involved, it should not preclude the SP/DCP/CP to continue the history

sheet, if they are of the view that his activities are prejudicial to the maintenance of law and order or one affecting the peace and tranquility in the area or the victims are not coming forward to give complaint against him on account of threat from him.

In the instant case, the rowdy sheet was opened against the petitioners under 601-A on the ground that the petitioners are habitual offenders or they have attempted to commit offence, admittedly the cased registered against them end in acquittal. Once the cases have ended in acquittal there cannot be any justification on the part of the respondents to continue to treat the petitioners are rowdies. A history sheet is different from rowdy sheet. The police standing order 602 does not permit to continue the rowdy sheet but it only deals with continuance of history sheet, if the concerned authority is of the view that the activities of the offenders are prejudicial to the maintenance of public order, but in the instant case, the rowdy sheets were continued up to 31.12.2006 and it is not known as to whether the rowdy sheets are being continued since then or not. Therefore, I am of the opinion that the action of the respondents in continuing the rowdy sheets against the petitioners even after their acquittal in all the aforesaid case is not justified but it is open for the respondents to continue the history sheet, if any opened, as contemplated under Order 602-2.

The writ petitions are accordingly disposed of. There shall be no order as to costs.

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V. ESWARAIAH, J

August 9, 2007
DSK

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[1] 1999 (2) ALT 733

[2] (1990) 4 SCC 552